

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**RUBY A CHELF**  
Claimant

**APPEAL NO. 13A-UI-13821-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO & GOLF RESORT**  
Employer

**OC: 11/1713  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Riverside Casino and Golf Resort (Riverside), filed an appeal from a decision dated December 12, 2013, reference 01. The decision allowed benefits to the claimant, Ruby Chelf. After due notice was issued, a hearing was held by telephone conference call on January 10, 2014. The claimant participated on her own behalf. The employer participated by Human Resources Business Partner Bobbi Adamson, Housekeeping Brandi Husband, and Hotel Director Suzanne Linton.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Ruby Chelf was employed by Riverside from October 31, 2006 until November 20, 2013 as a full-time laundry lead. On November 18, 2013, one of the laundry workers came to Housekeeping Manager Brandi Husband to complain about Ms. Chelf. She had heard the claimant ask another laundry worker if she was “retarded.” There were further allegations of “yelling” and bullying, and that the laundry workers were afraid of retaliation if they went to human resources or Ms. Husband with concerns.

Ms. Husband and Hotel Director Suzanne Linton then interviewed the five other full-time laundry workers individually over a period of days. Each one of them expressed the same concerns about bullying, yelling, and being told they could not go to human resources but must go to Ms. Chelf if they had any concerns.

Human Resources Business Partner Bobbi Adamson interviewed Ms. Chelf on November 20, 2013, about the complaints. She denied everything but the employer felt the consistency of the laundry workers’ complaints had more credibility and Ms. Chelf was discharged.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Under the provisions of the above Administrative Code section, there must be more than a mere allegation of misconduct. The employer did not provide testimony from any of the workers who complained or even written statements from them.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative

law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated December 12, 2013, reference 01, is affirmed. Ruby Chelf is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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